

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE:
GRAND JURY CASE NO. 10-GJ-3793

1:19-DM-00012-AJT
ALEXANDRIA, VIRGINIA
MAY 16, 2019

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE ANTHONY J. TRENGA
UNITED STATES DISTRICT JUDGE

UNSEALED EXCERPT

Proceedings reported by stenotype, transcript produced by
Julie A. Goodwin.

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United States District Court

401 Courthouse Square

Alexandria, Virginia 22314

1 (MAY 16, 2019, 3:10 P.M. ON THE RECORD, OPEN COURT ~ EXCERPT OF
2 UNSEALED PORTION.)

3 THE COURT: We're in open session with respect to
4 matters that pertain to the grand jury. Let me summarize for
5 the public record those proceedings.

6 By order dated May 3, 2019, the Court ordered
7 Ms. Manning to testify before the grand jury and also granted
8 use and derivative use immunity.

9 Ms. Manning has refused to testify before the grand
10 jury as ordered. She has persisted in that refusal and has
11 informed the Court that she will continue to refuse to testify.

12 The Court has also considered whether Ms. Manning
13 has just cause to refuse to testify before the grand jury and
14 has concluded that the reasons she has given for not testifying
15 before the grand jury do not constitute just cause.

16 In that regard, Ms. Manning's position briefly
17 summarized is that she objects in principle to the grand jury,
18 which she views as an abuse of entity and that notwithstanding
19 its -- its being part of the Constitution, does not believe
20 that she can participate in the grand jury on principle.

21 For all these reasons, the Court has found
22 Ms. Manning in contempt, and the Court now will consider what
23 sanction is appropriate.

24 Mr. Traxler.

25 MR. TRAXLER: Thank you, Your Honor.

1 With the Court having found Ms. Manning in
2 contempt, the Government asks that the Court now order that she
3 be incarcerated until she purges herself of that contempt or
4 for the life of the grand jury.

5 It's the basic obligation of all citizens to
6 testify in front of the grand jury when called upon to do so,
7 and the refusal of individuals to testify in front of the grand
8 jury threatens the safety of welfare of all the people. It
9 hampers the grand jury's ability to carry out its solemn
10 responsibilities of investigating whether a crime has been
11 committed, what crimes have been committed, if any, who
12 committed the crimes, and whether there is sufficient evidence
13 for charges to be brought. By refusing to testify in front of
14 the grand jury, Ms. Manning prevents the grand jury from
15 carrying out those responsibilities.

16 Further incarceration is appropriate here to coerce
17 Ms. Manning into testifying so that the grand jury can perform
18 those responsibilities. And there's a few points I would like
19 to make, Your Honor, about why the Government believes that
20 further incarceration remains appropriate.

21 First, Your Honor, Ms. Manning on her prior
22 contempt finding served only two months' incarceration before
23 her release. And she is only out today because the term of
24 that grand jury expired.

25 During half the time of her prior incarceration,

1 she had an appeal pending, so that meant that she had the hope
2 that she would be released on legal grounds which dampen the
3 coercive impact of that incarceration.

4 And I would point out, Your Honor, the courts
5 regularly require contemners to sit in jail for much longer
6 periods of time before entertaining whether to release them
7 because there's no coercive effect.

8 Simply put, Your Honor, Ms. Manning has not spent
9 enough time in jail on civil contempt to arrive at a
10 determination whether further -- that further incarceration
11 would not have a coercive effect.

12 Second, Your Honor, we would submit that
13 Ms. Manning stated for not -- stated reason for not testifying
14 is specious at best. Ms. Manning claims to be taking a
15 principle stand against the grand jury, but if that claim could
16 pass muster and prevent somebody from being incarcerated for
17 civil contempt, the entire grand jury system would threaten to
18 collapse because everyone could simply take the principled
19 stand against the grand jury to relieve themselves of
20 incarceration.

21 We also believe that Ms. Manning's attacks on the
22 grand jury are unfounded. The grand jury system exists to
23 protect the very individual liberties that Ms. Manning claims
24 to espouse. As prosecutors, the Government has to convince the
25 grand jury, a group of ordinary citizens, that there is

1 sufficient evidence to bring criminal charges against someone.
2 The grand jury serves as a buffer or as a kind of referee
3 between the Government and its people.

4 Because it protects individual liberties, our
5 founders enshrine the grand jury in the Fifth Amendment, and
6 the alternative is to bring -- is to give the Government more
7 unfettered power to bring charges. And based on Ms. Manning's
8 concerns about Government overreach, it's hard to believe that
9 she actually thinks that that's the better way to go.

10 Your Honor, the Government submits as Ms. Manning
11 spends longer in jail she could realize that it's actually in
12 her personal interest to comply with this Court's order to
13 testify in front of the grand jury. The longer she spends time
14 in jail, the costs of that incarceration mount, she's taken
15 away from her speaking engagements and whatever businesses she
16 has going on, and the pressure to comply with this Court's
17 order will increase. And that is the purpose of the coercive
18 sanction that the Court should impose today is to get her into
19 the grand jury room as the Court has ordered her to do.

20 Ms. Manning holds the keys to the jailhouse door,
21 and she is the master of her own destiny here. She can get
22 herself out of jail at any time by simply complying with the
23 Court's order.

24 And, Your Honor, I would like to address just very
25 briefly a couple of alternatives that have been used to -- as

1 opposed to incarceration as a coercive sanction and explain why
2 the Government believes that those would not be effective here.

3 First, some courts have imposed periodic fines as a
4 way to coerce a contemner into complying with the Court's
5 order. The Government believes that that will not work here
6 because Ms. Manning could simply go out and start trying to
7 raise the money via social media or what other -- what other --
8 whatever other avenues to pay those fines, and that would
9 dampen the coercive impact of the Court's sanction.

10 THE COURT: They're not mutually exclusive. They
11 could be -- they could be imposed together, couldn't they?

12 MR. TRAXLER: They could -- both incarceration and a
13 fine could be imposed --

14 THE COURT: Yes.

15 MR. TRAXLER: -- yes, Your Honor.

16 THE COURT: All right.

17 MR. TRAXLER: And, Your Honor, we also believe that
18 home confinement, which Ms. Manning seems to want, would not
19 work here. That's even less restrictive on her than jail. And
20 she's spent two months in jail and hasn't -- and didn't
21 testify. There's no reason to think that she -- if she was put
22 in home confinement, that that would somehow have an effect on
23 her to get her to testify.

24 So, jail, Your Honor, is what the Government
25 believes is the appropriate coercive sanction here to get her

1 to comply with the Court's order.

2 But let me just be clear. The Government does not
3 like this turn of events. As we repeatedly stated, we do not
4 wish we were at this point with Ms. Manning today. Above all
5 else, what we want is for Ms. Manning to comply with this
6 Court's order and to perform her basic civic obligation to
7 testify.

8 And like every other citizen, Ms. Manning must
9 comply with the Court's order. She doesn't deserve special
10 treatment to make her exempt from that court -- from this
11 Court's order. Therefore, as we would with any similarly
12 situated witness who defies a lawful court order, we request
13 that the Court order that Ms. Manning be incarcerated
14 immediately until she purges herself of her contempt or for the
15 life of this grand jury.

16 THE COURT: All right.

17 MR. TRAXLER: Thank you, Your Honor.

18 THE COURT: Ms. Meltzer-Cohen.

19 MS. MELTZER-COHEN: The recalcitrant witness statute
20 contemplates that the contempt sanction may be enforced with
21 civil confinement for purposes of coercing cooperation. As
22 Mr. Traxler said, the contemner is said to hold the key to
23 their own cell because they can end their confinement at any
24 time by agreeing to give testimony.

25 The civil contempt sanction is one that may be

1 imposed without the protections afforded criminal defendants
2 because the confinement is conditioned upon the contemner's own
3 conduct. Thus, under both the common law governing the Court's
4 traditional contempt powers and its codification in 20 -- er,
5 yes, in 20 at U.S.C. 1826, civil confinement is intended only
6 to be coercive. Even more, civil confinement cannot be used as
7 an instrument of policy.

8 And I have a quote here from the leading case on
9 this, *Simpkin v. U.S.*

10 If a judge orders continued confinement without
11 regard to its coercive effect upon the contemner, or as a
12 warning to others who might be tempted to violate their
13 testimonial obligations, he has converted the civil remedy into
14 a criminal penalty.

15 In the event that there is no possibility of
16 purging contempt, either because the grand jury has expired or
17 because the witness is incoercible, then the confinement serves
18 no further lawful purpose, and the witness must be released.

19 Mr. Traxler just talked about Ms. Manning's
20 personal interest. I think as you just saw, Ms. Manning knows
21 very well that it is in her personal interest to testify before
22 this grand jury. She subsumes her personal interest to a
23 larger collective principle. Whatever we may think of that
24 principle, she is staunch in defending it.

25 And I would like to hand up to you, Your Honor,

1 this is a motion to release Chelsea that we filed a few days
2 before her release, and in it it includes a declaration from
3 Chelsea that I think is quite compelling, and it also includes
4 letters from her colleagues, her family and her friends. Many
5 of them expressed some chagrin at her stand, but they do
6 acknowledge that she is likely to persist in it forever.

7 THE COURT: This had been previously filed --

8 MS. MELTZER-COHEN: This was previously --

9 THE COURT: Right.

10 MS. MELTZER-COHEN: -- filed.

11 THE COURT: And the Court's reviewed it.

12 MS. MELTZER-COHEN: Okay. Great.

13 She is not going to cooperate with this grand jury.
14 She knows it, I know it, her friends and colleagues and family
15 know it. The Government by stipulating to the questions that
16 they would have asked her today had she agreed to testify seems
17 to have conceded that they know it.

18 Whatever you may think of her, Chelsea Manning is a
19 principled person, and the fact is that many people, many
20 powerful people have expressed extremely public hostility and
21 disdain for her for all kinds of reasons, and this has moved
22 her not at all.

23 For nearly a decade, Ms. Manning has been vilified
24 as a symbol of everything that is wrong with the world, and she
25 has continued to be true to herself. She has been cajoled and

1 incentivized to be a figurehead for movements and ideas that
2 she doesn't really believe in, and she has continued to be true
3 to herself rather than benefitting from standing up for
4 something that she doesn't believe in.

5 She has been asked to apologize, and she has been
6 given opportunities to displace blame from herself onto others,
7 and none of that has moved her. She stands firm in taking
8 responsibility for her actions and standing by her principles.

9 She spent a tough seven years in prison being
10 confined in a men's facility, being placed in extended solitary
11 confinement that was so prolonged that the UN got involved.
12 She was denied medically necessary care during that time. She
13 knows what it is to suffer, and she walked into this with her
14 eyes open.

15 She has taken a very public stand, and she is
16 supported by a global community. And I'm going to read into
17 the record one -- one paragraph from her declaration.

18 It says: I received enormous support from all
19 around the world. My family and close friends all support me
20 and express their pride in me. It's emotionally overwhelming
21 sometimes to see their unwavering generosity.

22 I receive warmth and strength from colleagues,
23 educators, lawyers, diplomats, activists, factory workers,
24 veterans, journalists, union leaders, store clerks, gardeners,
25 chefs, airplane pilots, and politicians from all across the

1 U.S. and the world at large, every class, culture, and age
2 imaginable.

3 Chelsea Manning is not going to back down.
4 Everything she has said and done over the last ten years has
5 made it abundantly clear that she is more willing to put
6 herself at grave risk than to betray her dearly held
7 principles. It is for that reason that she is hailed as an
8 exemplar of integrity, and it is for that reason that her
9 agreeing to cooperate would be met with disappointment and
10 condemnation from those who form the base of her support.

11 Judges frequently lament what they perceive as the
12 perversity of this law, but they nevertheless universally
13 conclude that in the event a witness is never going to be
14 swayed by incarceration, that confinement has lost its
15 character as coercive and must be terminated.

16 There is no question but that the law forbids her
17 further confinement unless it can have a coercive effect.

18 Ms. Manning is a famously principled person. She
19 has made many public statements that she will not capitulate.
20 Those closest to her affirm that while they may not always
21 agree with her, they have no doubt that she will stand by her
22 principles even at great cost to herself. The internal and
23 social cost of betraying those principles would be
24 catastrophic.

25 An order confining her will not have the required

1 effect. Such an order would therefore be not only ineffective,
2 but unlawful. However, in the event that you do wish to have
3 her confined, I would ask that you review these letters, which
4 I don't believe are part of the record --

5 THE COURT: All right.

6 MS. MELTZER-COHEN: -- below, and issue an order for
7 house arrest.

8 I also do want to briefly state that I agree with
9 the Government that other sanctions, including fines, are also
10 unlikely to have a coercive effect.

11 And I'll give you a moment to review those letters.

12 (BRIEF PAUSE.)

13 THE COURT: All right. I've reviewed this.

14 MS. MELTZER-COHEN: Thank you.

15 Your Honor, Section 1826 explicitly contemplates
16 confinement at what they call a suitable place. What we argued
17 previously and what was borne out in spite of, I think, the
18 very best efforts of the Alexandria Detention Center, and
19 specifically Chief Pankey, was that the ADC medical staff lacks
20 the necessary training to examine and treat Chelsea in the
21 event of any post-surgical complications. And, in fact, this
22 is what happened.

23 In April, as soon as Chelsea developed
24 complications, she informed ADC medical staff, and as we
25 appeared, what they told her was that they did not have

1 sufficient training to examine or treat a post-vaginoplasty
2 vagina. They told her that they had never encountered a
3 patient who had her particular needs, and that not only did
4 they feel that treating her was beyond the scope of their
5 practice, but they said that they did not even know how to
6 examine her or diagnose her.

7 The solution that was proposed was for her to reach
8 out to her own doctor at her own expense and get her cleared,
9 Doctor Goldstein cleared, to come in to examine and treat her.
10 And that clearance has now been obtained, and it sounds like it
11 will not take as long to re-obtain that clearance should it
12 become necessary, but it ended up taking so long that Chelsea
13 ended up being released before Doctor Goldstein was able to get
14 to ADC to see her.

15 So, now Doctor Goldstein has been cleared, and we
16 have been given assurances that if a serious complication were
17 to arise Chelsea would be taken to an emergency room.

18 I want to again recognize, I don't think there's
19 any ill will here. I don't think -- I think that the
20 Government and ADC are making genuine efforts to accommodate
21 Chelsea's medical needs, but what has become apparent is that
22 they actually don't understand what those needs are or what the
23 risks are associated with those needs.

24 So, first of all, the source of the complications
25 that Chelsea has experienced seem to have been at least in part

1 due to the questionable hygiene of the jail and the lack of
2 control that Chelsea herself has over her daily post-surgical
3 regimen. And that is something -- that lack of control is
4 something that ADC is absolutely unwilling to -- to change.

5 More seriously, the medical staff at ADC are in no
6 way unusual in their lack of competence with respect to being
7 able to diagnose and treat a -- the post-surgery needs of a
8 transwoman. So, going to the emergency room of a hospital does
9 not actually represent any kind of meaningful guarantee that
10 Chelsea would receive appropriate treatment for complications
11 arising from her gender confirmation surgery because it is such
12 a niche area of medical practice that there is no reason to
13 think that an emergency room would have a trans competent
14 doctor there.

15 The nearest doctors as far as we know who provide
16 this kind of treatment, and certainly Chelsea's doctor, is in
17 New York, and so emergency room care in Alexandria is not
18 actually likely to be responsive or immediate.

19 Now, Mr. Miranda has told me that he believes there
20 may be another facility somewhere in this area to which she
21 might be able to be taken, but I have no -- this was a sort of
22 vague representation: I don't know who these doctors are; we
23 have not really looked into this.

24 And in any case, my larger concern is that there is
25 no reason to think that ADC medical staff would know -- would

1 be able to identify what a serious complication was in order to
2 get Chelsea to appropriate medical care.

3 You know, I don't think we -- we need to be
4 circumspect about taking chances with somebody's health like
5 this, particularly because ADC medical staff has explicitly
6 said that they are unwilling to examine her because they are
7 not competent to do so.

8 I don't think it is misplaced that we are gravely
9 concerned that a serious complication might not be noticed or
10 taken seriously until it had reached the point of being life
11 threatening, which is I think as you saw in the letters you
12 just read an actual possibility.

13 So, again, I want to be clear that I don't think
14 anyone is trying to harm Chelsea. I don't think they have any
15 interest in harming Chelsea, and in fact, I think that they
16 very much want to demonstrate their capacity to accommodate
17 Chelsea because they very much want to incarcerate her. But,
18 ADC is by their own admission not a place that is capable of
19 providing anything approaching adequate care, and there's no
20 reason to think that the emergency room could provide such care
21 either, even in the event that the medical staff at ADC were
22 able to recognize, understand, and take seriously a serious
23 complication before it was too late.

24 So, for this reason, I do not believe that
25 confinement at Alexandria Detention Center represents a

1 suitable place as contemplated by the recalcitrant witness
2 statute. However, house arrest, with whatever conditions you
3 might want to impose, would certainly be onerous and would
4 exert upon Ms. Manning an enormous degree of frustration.

5 I -- I want to clarify, again, not only do I think
6 that ADC is not a suitable place, I think it would be a
7 necessarily punitive place, because in the event that any
8 Eighth Amendment issues arose, they would just be catastrophic,
9 unresolvable, potentially permanent, potentially life
10 threatening, and so I think of necessity what we're looking at
11 in that case is not something -- is something that
12 definitionally passes out of the realm of the coercive and into
13 the punitive.

14 So, house arrest, as I said with conditions, would
15 be onerous and frustrating. I will say I do not believe that
16 it would have any more coercive effect than confinement at ADC
17 because it is absolutely clear to me that my client is not
18 coercible. But confining Chelsea in a manner that would not
19 affirmatively prevent her from accessing medically necessary
20 care in a timely manner would at the very least put her at less
21 risk of permanent harm.

22 And I believe I have nothing further, Your Honor.

23 THE COURT: All right. Thank you.

24 MS. MELTZER-COHEN: Thank you.

25 THE COURT: Counsel.

1 MS. MCCORMICK: Thank you, Your Honor.

2 I just want to address the -- the medical issues
3 primarily because the ADC is suitable, suitable under 1826 and
4 it's suitable as -- as a facility.

5 It can accommodate and it has accommodated
6 Ms. Manning's ongoing medical needs. The Court already has the
7 declaration of the deputy chief from the ADC in the record, so
8 I'm not going to belabor those points.

9 THE COURT: Well, she could -- she could also be
10 assigned to other facilities, couldn't she?

11 MS. MCCORMICK: There are. There are medical
12 facilities in the Bureau of Prisons --

13 THE COURT: Right.

14 MS. MCCORMICK: -- that are potential if this -- if --
15 as needed.

16 THE COURT: Right.

17 MS. MCCORMICK: But, in fact, the U.S. Attorney's
18 office, the Alexandria Detention Center, and the U.S. Marshal
19 Service have all bent over backwards to accommodate
20 Ms. Manning's needs, and I think that Ms. Manning's counsel has
21 publicly and privately stated as such.

22 Most recently, we agreed to delay this court
23 hearing and to delay the testimony to allow Ms. Manning to go
24 see a doctor. The ADC and the U.S. Marshal Service agreed to
25 allow Ms. Manning's position -- I guess it's a nurse

1 practitioner. We got the letter --

2 THE COURT: Right.

3 MS. MCCORMICK: -- before the hearing to come to the
4 ADC to examine her.

5 Now, there are clearance processes they have to go
6 through. They have to make sure she doesn't have a criminal
7 record. That she actually has licenses that she says. So,
8 those things have been done.

9 And I have Chief Tom Miranda from the U.S. Marshal
10 Services here if the Court has any questions, but I can proffer
11 to you what he's discussed with me and also with Manning's --
12 with Ms. Manning's attorneys earlier today, is that they have
13 previously cleared this Ms. Goldstein, or Nurse Goldstein, to
14 come to the facility. And that if they needed to do a recheck
15 of that it would take two days to do so, so there's no
16 significant delay in getting care. The ADC has also stated
17 that it would accept Ms. Manning's topical steroid that she was
18 prescribed for her condition.

19 And let me just talk to the -- to the fact that the
20 ADC, you know, couldn't do a specific examination. I mean,
21 anytime you go to a general practitioner and they don't have a
22 specialty, they're not going to treat you. They're going to
23 refer you to a specialist. So I don't think there's anything
24 different about this here. In fact, Ms. Manning's attorney
25 said that even an emergency room would not be sufficient.

1 So, I don't think -- I don't think the standard
2 under 1826 is -- is -- is perfect. It's suitable. It's what's
3 required. The ADC is a suitable facility to care for
4 Ms. Manning.

5 If there is any urgent care issues, which general
6 practitioners are trained to watch for, they don't have to do a
7 specific examination. If someone has a fever, generally a
8 doctor might suspect an infection. There are other signs that
9 the body gives people to tell you if there's an urgent care --
10 care issue, and the ADC, just like they would with anyone else
11 who has an urgent care issue, if you have a cardiac arrest or
12 if you have a stroke, they would bring Ms. Manning to a
13 hospital.

14 So safety is an interest we all share here and the
15 ADC has not only been a suitable place, but I believe it -- and
16 I think Ms. Manning's attorneys would agree, that they've been
17 remarkably accommodating to Ms. Manning's needs and they've
18 bent over backward to -- to -- to help her.

19 To be clear, we are -- we are not making these
20 arguments because we want to incarcerate Ms. Manning. We
21 actually would like Ms. Manning to follow the law and testify.
22 We do not -- we do not want to put her in incarceration. We
23 would very much like her to change her mind right now.

24 And if I could speak to that for a second, because
25 Ms. Meltzer-Cohen just discussed a little bit about how this is

1 turning from a coercive to a punitive sanction because
2 Ms. Manning has stated that under no circumstances will she
3 ever testify. That -- you know, a blanket statement like that
4 by any witness, you know, you have to be scrutable with because
5 any witness could therefore just come in and say, I'm never
6 going to testify in the grand jury, so you can't hold me
7 accountable under your court order and you can't hold me in --
8 you can't hold me in contempt or incarcerate me because I'm not
9 going to change my mind. So, that would break down the whole
10 grand jury system.

11 And the fact of the matter is people do change
12 their mind. They change their mind all the times when it's in
13 their interest to do so.

14 In fact, Ms. Manning has changed her mind. She has
15 stood for transparency, she's stood for freedom of information,
16 and yet she's depriving the grand jury the opportunity to --
17 for her transparency to them and to provide full information to
18 them.

19 I don't have anything further.

20 THE COURT: All right. Thank you.

21 MS. MELTZER-COHEN: Your Honor?

22 THE COURT: Yes.

23 MS. MELTZER-COHEN: May I respond?

24 THE COURT: Yes.

25 MS. MELTZER-COHEN: I guess as a preliminary matter I

1 would like to clarify that I think Ms. Manning has stood for
2 government transparency, and, in fact, continues to stand for
3 transparency in terms of even what she told you earlier, Your
4 Honor, about her objections to secrecy.

5 I -- I do hear Ms. McCormick with respect to the
6 ways in which ADC has been remarkably accommodating. And,
7 again, I want to make quite clear that this is not to cast
8 dispersions on ADC. The issue of intent is irrelevant here.

9 It is clear to me that ADC has bent over backwards
10 and that nevertheless it is not possible for a carceral
11 environment to accommodate the kinds of health needs and
12 potential health needs that Ms. Manning has.

13 I do not, as I have said repeatedly, believe that
14 there is any sanction that is going to be effectively coercive,
15 but jail has proven not to be coercive.

16 I mentioned earlier Ms. Manning's previous
17 seven-year confinement. It was quite damaging to her, but she
18 certainly has survived it. Further confinement is likely to
19 compound the trauma and harm that she will come to, but there
20 is -- I don't think there's any chance that she's going to
21 capitulate simply as a result of being jailed again.

22 So, you know, I guess I would suggest that we -- if
23 you're going to impose a sanction, maybe try something else.

24 THE COURT: All right.

25 MS. MELTZER-COHEN: I -- I know that corporations

1 routinely do get fined. I'm not aware of cases where
2 individuals do, but another sanction and maybe, you know,
3 combined with various kinds of conditions would be only to go
4 on this.

5 THE COURT: All right. Thank you.

6 MS. MELTZER-COHEN: Thank you.

7 THE COURT: It's unfortunate that we're at this point,
8 particularly given the grounds upon which Ms. Manning has
9 embraced for refusing to testify for the grand jury, but the
10 threshold issue for the Court in terms of a sanction is whether
11 there's a realistic possibility that a further coercive
12 sanction will cause her to comply with the Court's order.

13 With respect to her contention that nothing will
14 convince her to testify before the grand jury, the Court has
15 considered and needs to consider a number of factors,
16 including, first of all, her reasons for not testifying, the
17 length of time she's already been subjected to a course of
18 sanction, and generally whether there remains, as I indicated,
19 a realistic possibility that continued confinement or other
20 permissive course of measures can -- may cause her to testify
21 factored into this analysis as the determination whether a
22 recalcitrant witness will not cave in the course of pressure of
23 a civil contempt order is really inherently speculative, and a
24 claim that a person will not yield is easily made and whether
25 the full range of permissive course of remedies have been used.

1 Here, the Court also needs to consider really
2 whether -- consider the extent to which there is a need to
3 avoid essentially incentivising or rewarding recalcitrant
4 behavior and foster a situation in which the more adamant the
5 contention and refusal to testify, the more likely a witness
6 would be released.

7 Here, Ms. Manning refuses to testify because of a
8 philosophical objection to the use of grand juries because of
9 what she views as a history of politically motivated abusive
10 prosecutions. That is a view that she indicated is in conflict
11 with the oath she took as an Army -- a member of the armed
12 services to uphold the Constitution. It is a process that is
13 in a rule to our criminal justice system. It is an institution
14 that consists of 23 United States citizens who are sworn to
15 protect the citizenry from abuse of Government practices, and
16 it takes 12 members, United States citizens, to authorize a
17 prosecution.

18 It's the Court's hope that Ms. Manning would
19 reflect on the principles that she says she's embracing, and
20 the Court would -- believes that her views would have a chance
21 to, as she reflects on them, to perhaps change over time as far
22 as the role of grand juries, and whether -- perhaps most
23 importantly, whether those views are worth the price that she
24 is paying for adhering to them.

25 Courts have also rejected motions to terminate

1 civil contempt. The confinements based on detentions must --
2 much shorter than -- much longer than Ms. Manning has already
3 been subjected to, particularly in the circumstances of this
4 case where some of her previous time in confinement was during
5 her appeal which arguably allowed her to retain the hope that
6 she could avoid testifying.

7 In any event, the Court concludes that civil
8 contempt remedy is not lost. It's a course of impact and has
9 not become punitive, and the Court's going to impose a sanction
10 at this time.

11 Ms. Manning, I'm going to give you an opportunity
12 to say anything you would like to say before the Court imposes
13 a sanction. Would you like to say anything?

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: All right.

16 THE WITNESS: Your Honor, I think that -- the
17 Government's position is that the, I have the keys to my own
18 cell, so to speak. I do not believe that this is an accurate
19 statement. I believe and I think that I've -- my entire life
20 and my -- the entire life that I've lived proves the fact that
21 I have a philosophical position, as you have heard.

22 My belief is that it is a far worse thing than any
23 amount of that -- the Government cannot build a prison bad
24 enough, cannot create a system worse than the idea that I would
25 ever change my principles or, as you -- as you so eloquently

1 put it, alter my opinion on -- alter my opinions on this. The
2 simple fact of the matter is, is that I would rather starve to
3 death than to change my opinions in this regard. And when I
4 say that, I mean -- I mean that quite literally.

5 THE COURT: All right.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Why don't you just stay there.

8 Ms. Manning, there's nothing dishonorable about
9 discharging your legal obligations as a United States citizen,
10 and I would just ask you to reflect on that.

11 The Court finds you in contempt. The Court's going
12 to commit you to the custody of the Attorney General, and until
13 you purge yourself of your contempt or the grand jury expires,
14 and no event more than 18 months. If you do not purge yourself
15 of contempt within 30 days, the Court's going to impose a
16 coercive conditional fine of \$500 per day. If you don't -- if
17 you don't purge yourself of contempt within 60 days, the
18 Court's going to increase that to \$1,000 a day. And that will
19 be -- that will be the sanction the Court imposes.

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: All right?

22 And the Court remands you to the custody of the
23 United States Marshals.

24 All right.

25 MS. MELTZER-COHEN: Your Honor?

1 THE COURT: Yes.

2 MS. MELTZER-COHEN: May I inquire?

3 THE COURT: Yeah, let me also say that to the extent
4 there are medical issues or urgent care issues that are not
5 being met, the Court -- they should be brought to the attention
6 of the Court, and the Court will certainly have the ability to
7 address those.

8 MS. MELTZER-COHEN: Your Honor, may I --

9 THE COURT: Yes.

10 MS. MELTZER-COHEN: -- ask you a question?

11 My understanding of the recalcitrant witness
12 statute and the case law surrounding it is that when a witness
13 is re-subpoenaed to a new grand jury after the expiration of
14 the previous one, the time that they sat during that previous
15 grand jury is included in that 18-month calculation.

16 Do you have a different understanding?

17 THE COURT: I am not -- I haven't dealt with that
18 issue.

19 MS. MELTZER-COHEN: Okay.

20 THE COURT: If that's the case, we can certainly --

21 MS. MELTZER-COHEN: Let's brief that issue.

22 THE COURT: Yeah, you should.

23 MS. MELTZER-COHEN: Can we make a schedule to brief
24 that issue?

25 THE COURT: Why don't you -- why don't you file a

1 follow-up of -- why don't you both file something within 14
2 days.

3 MS. MELTZER-COHEN: You've got it.

4 THE COURT: All right?

5 MS. MELTZER-COHEN: Thank you, Your Honor.

6 THE COURT: All right. Thank you.

7 Counsel are excused. Ms. Manning's remanded. The
8 Court stands in recess.

9 THE LAW CLERK: All rise.

10 (PROCEEDINGS CONCLUDED AT 3:50 P.M.)

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14 UNITED STATES DISTRICT COURT)
15 EASTERN DISTRICT OF VIRGINIA)

16 I, JULIE GOODWIN, Official Court Reporter for the
17 United States District Court, Eastern District of Virginia, do
18 hereby certify that the foregoing is a correct transcript from
19 the record of proceedings in the above matter, to the best of
20 my ability.

18 I further certify that I am neither counsel for,
19 related to, nor employed by any of the parties to the action in
20 which this proceeding was taken, and further that I am not
21 financially nor otherwise interested in the outcome of the
22 action.

23 Certified to by me this 12TH day of JUNE, 2019.

24

25

23 /s/
JULIE GOODWIN
Official U.S. Court Reporter
401 Courthouse Square
Alexandria, Virginia 22314

25